

AMENDMENTS TO HOUSE RESOLUTION NO. 240

Sponsor: REPRESENTATIVE ECKER

Printer's No. 3607

1 Amend Resolution, page 1, lines 4 through 19; pages 2 through
2 21, lines 1 through 30; page 22, lines 1 through 27; by striking
3 out all of said lines on said pages and inserting

4 WHEREAS, Lawrence Samuel Krasner was elected to the position
5 of District Attorney of Philadelphia on November 7, 2017, and
6 re-elected to the position on November 2, 2021, pursuant to
7 section 4 of Article IX of the Constitution of Pennsylvania; and

8 WHEREAS, Pursuant to section 4 of Article VI of the
9 Constitution of Pennsylvania, only the House of Representatives,
10 as a body, has the power of impeachment; and

11 WHEREAS, Pursuant to section 6 of Article VI of the
12 Constitution of Pennsylvania, civil officers like District
13 Attorney Krasner may be subject to impeachment by the House of
14 Representatives for "any misbehavior in office"; and

15 WHEREAS, In its 1994 opinion in *Larsen v. Senate of*
16 *Pennsylvania*, the Commonwealth Court spoke to the meaning of the
17 language "any misbehavior in office" in section 6 of Article VI
18 of the Constitution of Pennsylvania; and

19 WHEREAS, Justice Larsen argued that the applicable standard
20 of "misbehavior in office" was nothing more than a codification
21 of the common law offense of misconduct in office, meaning "the
22 breach of a positive statutory duty or the performance by a
23 public official of a discretionary act with an improper or
24 corrupt motive"; and

25 WHEREAS, In its opinion, the Commonwealth Court held that
26 even if the strict definition espoused by Larsen were the
27 appropriate rule, Larsen's conduct still met that heavy burden.
28 More importantly, however, the court said that this "strict
29 definition...finds no support in judicial precedents." Stated
30 differently, there is no precedent that the current language is
31 so constrained; and

32 WHEREAS, The Philadelphia District Attorney's Office's stated
33 mission and statutory purpose is, among other things, to provide
34 a voice for victims of crime, protect the community through
35 zealous, ethical and effective investigations and prosecutions,
36 and to uphold and prosecute violations of the laws of this
37 Commonwealth and the provisions of Philadelphia's Home Rule

1 Charter; and

2 WHEREAS, District Attorney Krasner, by and through his failed
3 policies and procedures, and throughout the discharge of his
4 duties as Philadelphia's chief law enforcement officer, has been
5 derelict in his obligations to the victims of crime, the people
6 of the City of Philadelphia and of this Commonwealth and has
7 failed to uphold his oath of office; and

8 WHEREAS, District Attorney Krasner is bound by the Rules of
9 Professional Conduct adopted by the Supreme Court, which set
10 forth the minimal ethical requirements for all attorneys
11 licensed to practice law in this Commonwealth, as well as the
12 Code of Judicial Conduct, which is applicable to all district
13 attorneys in this Commonwealth. 16 Pa. Stat. Ann. § 1401(o) ("A
14 district attorney shall be subject to the Rules of Professional
15 Conduct and the canons of ethics as applied to judges in the
16 courts of common pleas of this Commonwealth ..."); and

17 WHEREAS, There have been multiple incidents of District
18 Attorney Krasner exhibiting unethical conduct by lacking candor
19 to the Courts of this Commonwealth in violation of Rule of
20 Professional Conduct 3.3, committing professional misconduct in
21 violation of Rule of Professional Conduct 8.4 and engaging in
22 impropriety and or appearances of impropriety in violation of
23 Canon 2 of the Code of Judicial Conduct; and

24 WHEREAS, District Attorney Krasner has been in office since
25 January 2018. Under District Attorney Krasner's administration,
26 and as detailed herein, the city has descended into an
27 unprecedented crisis of lawlessness. By way of example only,
28 there were 562 murders in 2021, the most in the 340-year history
29 of the city. Under District Attorney Krasner, murders and
30 violence occur in every part of the city at every hour of the
31 day. Shootings on public transportation, in populated
32 neighborhoods with families and children, near schools and in
33 the center city business district have now become frequent and
34 routine. Open air drug markets have become ubiquitous. He has
35 decriminalized prostitution effectively destroying programs
36 designed to rescue women from addiction and human trafficking.
37 District Attorney Krasner has decriminalized retail theft
38 resulting in numerous businesses leaving the city. He has
39 released criminals back on to the street who go on to commit
40 even more heinous crimes of murder, rape and robbery against the
41 people of Philadelphia, the overwhelming majority of whom are
42 African American. This crisis of crime and violence is a direct
43 result of District Attorney Krasner's incompetence, ideological
44 rigidity and refusal to perform the duties he swore to carry out
45 when he became District Attorney. He has deliberately
46 eviscerated the District Attorney's Office's ability to
47 adequately enforce the laws of this Commonwealth; endangered the
48 health, welfare and safety of more than 1.5 million
49 Pennsylvanians that reside in Philadelphia and the tens of
50 millions of Americans who visit the city every year; and, his
51 conduct has brought the Office of District Attorney and the

1 justice system itself into disrepute; therefore be it
2 RESOLVED, That Lawrence Samuel Krasner, District Attorney of
3 Philadelphia, be impeached for misbehavior in office and that
4 the following Articles of Impeachment be exhibited to the Senate
5 pursuant to section 5 of Article VI of the Constitution of
6 Pennsylvania:

7 ARTICLE I:

8 Misbehavior in Office In the Nature of Dereliction
9 of Duty and Refusal to Enforce the Law

10 Upon assuming office, District Attorney Krasner terminated
11 more than 30 assistant district attorneys (ADA) from employment
12 with the Philadelphia District Attorney's Office. Many of these
13 terminated assistant district attorneys were senior-level
14 staffers in supervisory roles who possessed significant
15 prosecutorial experience and knowledge of criminal procedure.
16 District Attorney Krasner replaced this vast institutional
17 knowledge in the Philadelphia District Attorney's Office with
18 attorneys who lacked any meaningful experience in prosecuting
19 criminal cases, some of whom only recently graduated from law
20 school.

21 District Attorney Krasner subsequently withdrew the office
22 from membership in the Pennsylvania District Attorneys
23 Association (PDAA) because, he asserted, PDAA supported
24 regressive and punitive policies. In withdrawing from PDAA,
25 District Attorney Krasner denied the attorneys in his office the
26 ability to participate in the various professional development
27 and training programs provided by PDAA through its educational
28 institute.

29 Rather than offering traditional prosecutorial training on
30 such subjects as prosecutorial ethics, human trafficking,
31 witness examination, trial advocacy, trial management and
32 achieving justice for domestic violence and sexual assault
33 victims, District Attorney Krasner offered attorneys seminars,
34 including "A New Vision for Criminal Justice in Philadelphia,"
35 "Deportation: The Unforeseen Consequences of Prosecution in our
36 Immigrant Community," and "Philadelphia and Safe Injection: Harm
37 Reduction as Public Policy." The Philadelphia District
38 Attorney's Office eventually returned to more traditional
39 prosecutorial training, however, the office continued to focus
40 on issues that promote District Attorney Krasner's radically
41 progressive philosophies rather than how to effectively
42 prosecute a criminal case.

43 Upon being elected to office, District Attorney Krasner
44 established a series of office policies with the purported
45 purpose to "end mass incarceration and bring balance back to
46 sentencing," and later adopted a series of policies related to
47 certain crimes or classes of people. These policies include
48 directives not to charge sex workers or individuals for certain
49 classes of crimes such as prostitution or possession of
50 marijuana and marijuana-related drug paraphernalia.

51 These new policies identified a series of offenses for which

1 the gradation may be reduced with the purpose of "reduc[ing]
2 pre-trial incarceration rates as no bail is required and the
3 shorter time required for hearings expedites Municipal Court and
4 Common Pleas dockets," and requiring disposition of retail theft
5 cases unless the value of the item stolen exceeds \$500 or where
6 the defendant has an extensive history of theft convictions.

7 District Attorney Krasner instituted policies to make plea
8 offers below the bottom end of the mitigated range under the
9 Sentencing Guidelines from the Pennsylvania Sentencing
10 Commission and seek greater use of house arrest, probation and
11 alternative sentencing when the sentencing guidelines indicate a
12 range of incarceration of less than 24 months.

13 In February 2018, District Attorney Krasner established a
14 policy that his office "will ordinarily no longer ask for cash
15 bail for...misdemeanors and felonies" listed in the policy,
16 because "[T]he cash bail system is rife with injustice and
17 exacerbates socio-economic and racial inequalities,
18 disproportionately penalizing the poor and people of color."

19 In November 2018, District Attorney Krasner adopted a policy
20 in which a criminal defendant's immigration status should be
21 considered in the plea-bargaining process, effectively providing
22 that if an immigration consequence is detected pre-trial or with
23 respect to a sentencing recommendation, counsel will advise if
24 an offer can be made to avoid the consequence.

25 Other policies that District Attorney Krasner directed were
26 as follows:

27 (1) Assistant district attorneys may not proceed in
28 cases against defendants driving under the influence of
29 cannabis when the defendants' blood "contains inactive
30 metabolite (11-Nor-9-Carboxy-Delta-9-THC) or 4 or fewer
31 ng/mls of psycho-active THC" and that "if the defense
32 presents evidence that calls impairment into question, an ADA
33 may consider dropping the charges against the defendant."

34 (2) The District Attorney's Office "will only oppose
35 motions for redactions or expungements in limited
36 circumstances" and sets forth various scenarios in which the
37 office will agree to, seek or not oppose the expungement of a
38 defendant's criminal history.

39 (3) The District Attorney's Office directed plea offers
40 and sentencing recommendations:

41 (i) for felonies, "aimed at an office-wide average
42 period of total supervision among cases of around 18
43 months or less of total supervision, with a ceiling of 3
44 years of total supervision or less on each case";

45 (ii) for misdemeanors, aimed at an office-wide
46 average of "6 months or less of total supervision, with a
47 ceiling of 1 year";

48 (iii) for all matters, for "concurrent sentences";
49 and

50 (iv) for cases involving incarceration, "for a
51 period of parole that is no longer than the period of

1 incarceration."

2 Nearly all of District Attorney Krasner's policies "create a
3 presumption" for ADAs to follow and require approval from
4 District Attorney Krasner himself or a first assistant district
5 attorney for deviations from the policies.

6 District Attorney Krasner, in an April 2021 report published
7 by the District Attorney's Office (DAO) titled "Ending Mass
8 Supervision: Evaluating Reforms," wrote in his opening letter:
9 "I am proud of the work this office has done to make
10 Philadelphians, particularly Philadelphians of Color, freer from
11 unnecessary government intrusion, while keeping our communities
12 safe." In reality, the policies and practices of the
13 Philadelphia District Attorney's Office instituted under the
14 direction of District Attorney Krasner have led to catastrophic
15 consequences for the people of the City of Philadelphia.

16 According to the City Controller, spikes in gun violence and
17 homicides have dramatically impacted historically disadvantaged
18 neighborhoods, and those neighborhoods are "primarily low-income
19 with predominately black or African American residents." The
20 Philadelphia Police Department (PPD) reports that the number of
21 homicide victims has increased every year since 2016, more than
22 doubling from 2016 to 2021, with a year-over-year increase of
23 40% between 2019 and 2020. As of October 16, 2022, there have
24 already been 430 homicides in the City of Philadelphia in 2022.
25 As of October 17, 2022, reported trends gathered from the PPD's
26 "incident" data, which tracks the reporting of all crimes in
27 addition to homicides, shows a 12% increase in all reported
28 offenses, a 6% increase in violent offenses and a 21% increase
29 in property offenses.

30 While incidents of violent crime are increasing, prosecution
31 of crime by the Philadelphia District Attorney's Office has
32 decreased during this same period. In 2016, the Philadelphia
33 District Attorney's Office reported that only 30% of "all
34 offenses" resulted in a dismissal or withdrawal, but that number
35 spiked to 50% in 2019, 54% in 2020, 67% in 2021 and 65% to date
36 in 2022.

37 A similar trend is evident when filtering the data for
38 violent crimes, where, in 2016, the withdrawal and dismissed
39 violent crime cases accounted for 48% of all violent crime case
40 outcomes, but that percentage increased to 60% in 2019, to 68%
41 in 2020, to 70% in 2021 and to 66% in 2022 to date. Data from
42 the Pennsylvania Sentencing Commission relating to violations of
43 the Uniform Firearms Act (VUFA) evidences a similar jarring
44 trend. The Sentencing Commission reports that guilty
45 dispositions in the City of Philadelphia declined from 88% in
46 2015 to 66% in 2020, compared to a decline from 84% to 72% in
47 counties of the second class, with the driver of the decrease
48 being nolle pros dispositions. As compared to the Statewide data
49 and other county classes, in the City of Philadelphia the
50 percent of guilty verdicts has decreased significantly, while
51 the percent of nolle prossed cases has increased.

1 Studies by the Delaware Valley Intelligence Center (DVIC)
2 attempted to provide "an explanation for the increase in
3 homicides and shootings in an effort to begin a conversation to
4 address the challenge at a strategic level," and, significantly,
5 the report notes:

6 "The rate of prosecution dismissal and withdrawal has been
7 increase [sic] substantially since 2015 under DA [Seth]
8 Williams, and has continued to increase after DA Krasner took
9 office. Furthermore, a closer examination of these dropped cases
10 indicates that more cases are dismissed/withdrawn at the
11 preliminary hearing state [sic] under DA Krasner than the actual
12 trial state []. This implies that, even when criminals are
13 caught with a gun, they are swiftly finding out they may not
14 receive as significant a consequence as they had historically.
15 Notably, the likelihood of being arrested is low to begin with.
16 This means that, criminals know that their likelihood of getting
17 caught with a gun is slim and, even if they get caught, they
18 feel that they can leave without severe (or any) consequences."

19 The DVIC conducted a "cursory examination" of
20 dismissed/withdrawn cases in 2018/2019 and "found 6 offenders
21 whose cases were dismissed (VUFA former convict charge) and got
22 later involved in shootings...2 of these shootings were fatal
23 and 4 out of these 6 offenders were gang members."

24 The DVIC studied the prosecution declination for narcotics,
25 retail theft and prostitution arrests from 2016 to 2018, and
26 concluded in its key findings that the percentage of all
27 declinations, not just narcotics, prostitution and retail theft,
28 increased "especially in 2018" to more than 7%, when it had been
29 just 2% or less between 2007 and 2015.

30 In September 2020, the Philadelphia City Council authorized
31 the Committee on Public Safety and the Special Committee on Gun
32 Violence Prevention to study gun violence in the city. This
33 study involved a collaboration between the Controller's Office,
34 Defender Association, Department of Public Health, District
35 Attorney's Office, First Judicial District, Managing Director's
36 Office, Pennsylvania Attorney General and PPD. The published
37 results, called the "100 Shooting Review Committee Report,"
38 discusses trends and general findings regarding shootings in the
39 City of Philadelphia. The published results showed the
40 following:

41 (1) The clearance rate (*i.e.*, when an arrest was made or
42 a suspect that could not be arrested was identified) for
43 fatal shootings in 2020 was 37% and the rate for nonfatal
44 shootings was 18%.

45 (2) There has been a "marked increase" in the number of
46 people arrested for illegal gun possession without the
47 accusation of an additional offense, including a doubling in
48 arrests for illegal possession of a firearm without a license
49 since 2018.

50 (3) The initial and final bail amounts set by courts in
51 illegal possession of firearms cases declined between 2015

1 and 2019 and increased in 2020 and 2021.

2 (4) Conviction rates in shooting cases declined between
3 2016 and 2020 from 96% to 80% in fatal shootings and from 69%
4 to 64% in nonfatal shootings.

5 (5) There is a long-term trend of a reduction in
6 conviction rates for illegal gun possession cases, dropping
7 from 65% in 2015 to 45% in 2020.

8 In August 2022, the Philadelphia Police Commissioner
9 indicated that her department is short-staffed by approximately
10 20%, or 1,300 officers, due to low morale, politics, increased
11 scrutiny and "uniquely stringent hiring requirements" during a
12 nationwide shortage.

13 Police Commissioner Danielle Outlaw stated, "The truth is the
14 homicides are not happening in a vacuum - there are those who
15 are determined to attack and kill their victims. While we are
16 making constant adjustments to mitigate this sickening reality,
17 our officers, simply put, just can't keep up by being everywhere
18 at all times." While the PPD may arrest a suspect for the
19 commission of a crime, the Philadelphia District Attorney's
20 Office is one of the few district attorney's offices in this
21 Commonwealth that reserves unto itself the authority to charge a
22 person for a criminal act.

23 In October 2022, following yet another act of violence
24 against police in the City of Philadelphia, Police Commissioner
25 Danielle Outlaw issued the following statement:

26 "We are tired of arresting the same suspects over and over
27 again, only to see them right back out on the street to continue
28 and sometimes escalate their criminal ways. We are tired of
29 having to send our officers into harm's way to serve warrants on
30 suspects who have no business being on the street in the first
31 place.

32 No - not everyone needs to be in jail. But when we repeatedly
33 see the extensive criminal histories of those we arrest for
34 violent crime, the question needs to be asked as to why they
35 were yet again back on the street and terrorizing our
36 communities.

37 I am beyond disgusted by this violence. Our entire department
38 is sickened by what is happening to the people that live, work,
39 and visit our city. Residents are tired of it. Business owners
40 are tired of it. Our children are tired of it.
41 We are long past 'enough is enough'."

42 Acts of violence, and particularly violent crimes committed
43 with firearms, have exacted a heavy toll on victims and their
44 families, with countless lives unnecessarily lost or
45 irretrievably broken, due to the increase of violent crime in
46 the City of Philadelphia. The foregoing acts constitute
47 "misbehavior in office" by District Attorney Krasner in that
48 such acts have substantially contributed to the increase in
49 crime in the City of Philadelphia, undermined confidence in the
50 criminal justice system, and betrayed the trust of the citizens
51 of Philadelphia and the Commonwealth.

1 WHEREFORE, District Attorney Lawrence Samuel Krasner is
2 guilty of an impeachable offense warranting removal from office
3 and disqualification to hold any office of trust or profit under
4 this Commonwealth.

5 ARTICLE II:

6 Misbehavior In Office In the Nature of Obstruction
7 of House Select Committee Investigation

8 House Resolution 216 of 2022 established the House Select
9 Committee to Restore Law and Order pursuant to Rule 51 of the
10 General Operating Rules of the House. The select committee is
11 authorized and empowered "to investigate, review and make
12 finding and recommendations concerning risking rates of crime,
13 law enforcement and the enforcement of crime victim rights," in
14 the City of Philadelphia.

15 House Resolution 216 further charges the select committee to
16 make findings and recommendations, including, but not limited
17 to, the following:

18 (1) Determinations regarding the performance of public
19 officials empowered to enforce the law in the City of
20 Philadelphia, including the district attorney, and
21 recommendations for removal from office or other appropriate
22 discipline, including impeachment.

23 (2) Legislation or other legislative action relating to
24 policing, prosecution, sentencing and any other aspect of law
25 enforcement.

26 (3) Legislation or other legislative action relating to
27 ensuring the protection, enforcement and delivery of
28 appropriate services and compensation to crime victims.

29 (4) Legislation or other legislative action relating to
30 ensuring the appropriate expenditure of public funds intended
31 for the purpose of law enforcement, prosecutions or to
32 benefit crime victims.

33 (5) Other legislative action as the select committee
34 finds necessary to ensure appropriate enforcement of law and
35 order in the City of Philadelphia.

36 In pursuit of these obligations, the resolution empowers the
37 select committee chair to, among other things, "send for
38 individuals and papers and subpoena witnesses, documents,
39 including electronically stored information, and any other
40 materials under the hand and seal of the chair." The chair
41 issued subpoenas to a number of Philadelphia municipal offices,
42 including the Controller, the Mayor, the Police Department, the
43 Sheriff's Office, the Treasurer and the District Attorney's
44 Office. The subpoenas sought nonprivileged records necessary to
45 fulfill the select committee's obligations to the House of
46 Representatives pursuant to House Resolution 216.

47 While other municipal offices worked cooperatively with the
48 select committee to respond to the subpoenas issued to them,
49 District Attorney Krasner and his office chose instead to
50 obstruct the select committee's work at every turn. District
51 Attorney Krasner and his office asserted that the select

1 committee was illegitimate and that its subpoenas served "no
2 valid legislative purpose, violating the separation of powers,
3 invading legal privileges, and seeking to deny the
4 constitutional rights of Philadelphia's citizens, especially
5 their democratic right to vote and choose their local leaders."

6 District Attorney Krasner asserted various claims that held
7 no basis in fact or law, including the following:

8 (1) District Attorneys are not subject to impeachment.

9 (2) Impeaching the District Attorney violates the
10 constitutional rights of the people who voted for him.

11 (3) The District Attorney committed no wrong, and
12 therefore was not required to comply with the committee
13 chair's subpoena.

14 (4) Impeachment of a public official requires a
15 conviction for a criminal act; and

16 District Attorney Krasner and his office refused to search
17 for or produce any documents in response to the subpoena.
18 Despite multiple attempts by counsel to the select committee
19 chair to bring District Attorney Krasner and his office into
20 compliance with the subpoenas, explaining on multiple occasions
21 that the select committee was seeking nonprivileged records and,
22 as it related to any record for which the District Attorney
23 believed were privileged, the District Attorney should follow
24 common practice in responding to a subpoena by providing a
25 privilege log to identify those records for which the District
26 Attorney asserts a privilege.

27 On September 12, 2022, after multiple exchanges between
28 counsel and a Request to Show Cause why the District Attorney
29 should not be held in contempt by the House, the select
30 committee issued an interim report pursuant to Rule 51 of the
31 General Operating Rules of the House of Representatives,
32 notifying the House of District Attorney Krasner's refusal to
33 comply with the subpoena and recommending that the House
34 consider contempt proceedings.

35 The House of Representatives adopted House Resolution 227 on
36 September 13, 2022, resolving that the House hold District
37 Attorney Krasner in contempt. House Resolution 227 was adopted
38 by a bipartisan vote of 162 to 38.

39 District Attorney Krasner filed an action in Commonwealth
40 Court on September 2, 2022, in which he raised the same
41 arguments that fail to have any meaningful basis in law or fact.
42 District Attorney Krasner and his office have since feigned
43 partial compliance with the subpoena, providing several public-
44 facing records obtained without the need to engage in any
45 legitimate effort to search for the records.

46 The select committee chair invited District Attorney Krasner
47 to testify before the select committee in executive session on
48 October 21, 2022. District Attorney Krasner refused to testify
49 in executive session, demanding a public hearing instead.
50 District Attorney Krasner then published a press release which
51 was misleading at best, mischaracterizing the invitation to

1 District Attorney Krasner to testify in yet another moment of
2 grandstanding.

3 Given the District Attorney's rejection of the invitation to
4 testify in executive session, the select committee was compelled
5 to cancel the hearing.

6 District Attorney Krasner has, at every turn, obstructed the
7 efforts of the House Select Committee on Restoring Law and
8 Order. He has consistently raised specious claims without a good
9 faith basis in law or fact. Even after the House of
10 Representatives resolved to hold him in contempt, District
11 Attorney Krasner's efforts to comply with subpoenas issued by
12 the select committee chair fall far short of what can be
13 considered a reasonable good faith effort.

14 WHEREFORE, District Attorney Lawrence Samuel Krasner is
15 guilty of an impeachable offense warranting removal from office
16 and disqualification to hold any office of trust or profit under
17 this Commonwealth.

18 Article III:

19 Misbehavior In Office In the Nature of Violation of
20 the Rules of Professional Conduct and Code of
21 Judicial Conduct; specifically Rule 3.3 Candor Toward
22 the Tribunal, Rule 8.4 Professional Misconduct, and
23 Canon 2 of the Code of Judicial Conduct Impropriety
24 and Appearance of Impropriety in the Matter
25 of *Robert Wharton v. Donald T. Vaughn*

26 In the Federal habeas corpus proceeding in *Robert Wharton v.*
27 *Donald T. Vaughn*, Federal District Court Judge Goldberg issued a
28 memorandum order admonishing and sanctioning the District
29 Attorney's Office. Robert Wharton was convicted of murdering the
30 parents of survivor Lisa Hart-Newman, who was seven months old
31 at the time and was left to freeze to death with her deceased
32 parents by Mr. Wharton.

33 After his conviction, Wharton pursued a death penalty habeas
34 petition in the Federal district court. The District Attorney's
35 Office under prior administrations had opposed this petition.

36 In 2019, District Attorney Krasner's administration filed a
37 "Notice of Concession of Penalty Phase Relief," stating that it
38 would not seek a new death sentence, and, based on that
39 sentencing relief, the litigation and appeals could end. The
40 concession noted only that the decision to concede was made
41 "[f]ollowing review of this case by the Capital Case Review
42 Committee of the Philadelphia [District Attorney's Office],
43 communication with the victims' family, and notice to
44 [Wharton's] counsel."

45 Judge Goldberg undertook an independent analysis of the
46 merits of the claim and invited the Pennsylvania Office Attorney
47 General (OAG) to file an amicus brief in the case. In its
48 amicus, the OAG submitted additional facts that the District
49 Attorney's Office had not disclosed, including evidence of
50 prison misconducts, attempted escapes and Department of
51 Corrections concerns regarding "assaultiveness" and "escape" by

1 Mr. Wharton.

2 The OAG concluded that "given the facts of this investigation
3 and aggravating sentencing factors present in this case, Wharton
4 could not establish a reasonable probability that the outcome of
5 his penalty phase death sentence would have been different if
6 the jury had heard evidence of his alleged 'positive' prison
7 adjustment."

8 The OAG further determined that members of the family,
9 including victim Ms. Hart-Newman, were not contacted and that
10 they opposed the concession by the District Attorney's Office.

11 After an evidentiary hearing, Judge Goldberg held as follows:

12 (1) The District Attorney's Office failed to advise the
13 court of significant anti-mitigation evidence, including that
14 Mr. Wharton had made an escape attempt at a court appearance.

15 (2) Two of the office's supervisors violated Federal
16 Rule of Civil Procedure 11(b)(3) "based upon that Office's
17 representations to this Court that lacked evidentiary support
18 and were not in any way formed after 'an inquiry reasonable
19 under the circumstances.'"

20 (3) Representations of communication with the victims'
21 family were "misleading," "false," and "yet another
22 representation to the Court made after an inquiry that was
23 not reasonable under the circumstances."

24 (4) The Law Division Supervisor, Assistant Supervisor
25 and District Attorney's Office violated Rule 11(b)(1), and
26 concluding that the violation was "sufficiently 'egregious'
27 and 'exceptional' under the circumstances to warrant
28 sanctions."

29 Judge Goldberg imposed nonmonetary sanctions on the District
30 Attorney's Office, requiring that separate written apologies be
31 sent to the victim, Lisa Hart-Newman, and the victim's family
32 members. Given the testimony of the two Law Division supervisors
33 that District Attorney Krasner approved and implemented internal
34 procedures that created the need for this sanction, and that the
35 District Attorney had the sole, ultimate authority to direct
36 that the misleading Notice of Concession be filed, therefore
37 "the apologies shall come from the District Attorney, Lawrence
38 Krasner, personally."

39 District Attorney Krasner has the sole authority to approve
40 court filings on behalf of Philadelphia District Attorney's
41 office. While in office, District Attorney Krasner directed,
42 approved and or permitted the filing of a "Notice of
43 Concession" and presentation of other pleadings and statements
44 in Federal court which contained materially false and or
45 misleading affirmative statements and purposeful omissions of
46 fact in violation of the Rules of Professional Conduct, Rule 3.3
47 (Candor Toward the Tribunal) and Rule 8.4 (Professional
48 Misconduct), and Code of Judicial Conduct, Canon 2 (Impropriety
49 and or Appearance of Impropriety).

50 WHEREFORE, District Attorney Lawrence Samuel Krasner is
51 guilty of an impeachable offense warranting removal from office

1 and disqualification to hold any office of trust or profit under
2 this Commonwealth.

3 Article IV:

4 Misbehavior In Office In the Nature of Violation of
5 the Rules of Professional Conduct; specifically
6 Rule 3.3 Candor Toward the Tribunal, Rule 8.4
7 Professional Misconduct, and Canon 2 of the Code
8 of Judicial Conduct Impropriety and Appearance of
9 Impropriety in the matter of *Commonwealth vs. Pownall*

10 In his special concurrence in *Commonwealth v. Pownall*,
11 Supreme Court Justice Dougherty highlighted what he feared to be
12 an effort by the District Attorney's Office to deprive certain
13 defendants of a fair and speedy trial. Following the June 2017
14 incident in which former Philadelphia police officer Ryan
15 Pownall shot and killed David Jones, the District Attorney's
16 Office submitted the matter to an investigative grand jury. The
17 investigating grand jury issued a presentment recommending that
18 Pownall be charged with criminal homicide, possession of an
19 instrument of crime and recklessly endangering another person;
20 and

21 During trial, the prosecutor filed a motion in limine to
22 preclude the standard peace officer justification defense
23 instruction, based on the assertion that the instruction, which
24 largely tracked language of statute, violated Fourth Amendment
25 prohibition against unreasonable search and seizure. The motion
26 was denied and the prosecution appealed to the Superior Court,
27 which quashed the appeal as unauthorized. The Supreme Court
28 granted the prosecutor's request for allowance of appeal.

29 The Supreme Court ultimately denied the appeal, but the
30 special concurrence filed by Justice Dougherty illuminated
31 startling behavior by the District Attorney's Office. Justice
32 Dougherty held that the District Attorney's Office's actions
33 during grand jury process "implicate[s] a potential abuse" and
34 stated that "the presentment in this case is perhaps best
35 characterized as a 'foul blow.'" He referred to the grand jury
36 presentment, authored by the District Attorney's Office, as a
37 "gratuitous narrative."

38 Justice Dougherty also recognized that any abuse of the grand
39 jury could have been remedied by "Statutory safeguards embedded
40 in the process," such as a preliminary hearing. He went on to
41 say "What is troubling is the DAO's effort to ensure that would
42 not occur," i.e., their filing of a motion to bypass the
43 preliminary hearing.

44 Justice Dougherty found it "inexplicable" that, in presenting
45 a bypass motion to the Court of Common Pleas, the District
46 Attorney's Office failed to highlight the Investigating Grand
47 Jury Act section 4551(e), which directs that a defendant "shall"
48 be entitled to a preliminary hearing. He emphasized that the
49 District Attorney's Office "appear[ed] to have known [about that
50 requirement] at the time it filed its motion."

51 As it related to the prosecutor's motion in limine and

1 interlocutory appeal, Justice Dougherty observed that the
2 District Attorney's Office's motion "presented only half the
3 relevant picture." He went on to say that "this type of advocacy
4 would be worrisome coming from any litigant," but coming from a
5 prosecutor, "is even more concerning, particularly in light of
6 the motion's timing...." He cited directly to Pennsylvania Rule
7 of Professional Conduct 3.3 regarding candor to the tribunal.

8 Further referencing ethical concerns, Justice Dougherty found
9 that the timing of the motion in limine, "[w]hen combined with
10 the other tactics highlighted throughout this concurrence,"
11 could lead to the conclusion that the decision to take "an
12 unauthorized interlocutory appeal was intended to deprive [Mr.
13 Pownall] of a fair and speedy trial." Justice Dougherty went on
14 to say:

15 Now, for the first time before this Court, the DAO finally
16 admits its true intent in all this was simply to use
17 Pownall's case as a vehicle to force judicial determination
18 on 'whether Section 508(a)(1) is facially unconstitutional.'
19 DAO's Reply Brief at 1; see id. at 6 (asserting Section 508's
20 applicability to [Pownall] is not the subject of this
21 appeal"). What's more, despite having assured the trial court
22 it was not trying 'to bar [Pownall] from a defense[.]' N.T.
23 11/25/2019 at 8, the DAO now boldly asserts it would be
24 appropriate for this Court to rewrite the law and
25 retroactively apply it to Pownall's case because he
26 supposedly 'had fair notice of his inability to rely on this
27 unconstitutional defense[.]' DAO's Brief at 10.

28 Justice Dougherty concluded, "Little that has happened in
29 this case up to this point reflects procedural justice. On the
30 contrary, the DAO's prosecution of Pownall appears to be "driven
31 by a win-at-all-cost office culture" that treats police officers
32 differently than other criminal defendants. DAO CONVICTION
33 INTEGRITY UNIT REPORT, OVERTURNING CONVICTIONS - AND AN ERA 2
34 (June 15, 2021) available at [tinyurl.com/CIU report](https://tinyurl.com/CIU-report) (last
35 visited July 19, 2022). This is the antithesis of what the law
36 expects of a prosecutor."

37 On remand, Common Pleas Court Judge McDermott said that there
38 were "so many things wrong" with the District Attorney's
39 Office's instructions to the investigating grand jury that it
40 warranted dismissing all charges against Mr. Pownall. After
41 hearing testimony from the assistant district attorneys who
42 handled the grand jury and preparation of the presentment, Judge
43 McDermott concluded that the District Attorney's Office failed
44 to provide the legal instructions to the grand jurors on the
45 definitions for homicide and information regarding the use-of-
46 force defense.

47 In her October 17, 2022, Statement of Findings of Fact and
48 Conclusions of Law, Judge McDermott stated, "The Commonwealth
49 made an intentional, deliberate choice not to inform the grand
50 jurors about the justification defense under Section 508. While
51 [the ADA] was aware of Section 508 and its applicability to the

1 Defendant's case at the time of the Grand Jury proceedings, she
2 decided not to advise the Grand Jury about Section 508 after
3 consulting with other, more senior Assistant District
4 Attorneys."

5 As it related to Pownall's right to a preliminary hearing,
6 Judge McDermott wrote:

7 In its Motion to bypass the preliminary hearing, the
8 Commonwealth demonstrated a lack of candor to the Court by
9 misstating the law and providing Judge Coleman with incorrect
10 case law.

11 * * *

12 The Commonwealth was also disingenuous with the Court
13 when it asserted that it had good cause to bypass the
14 preliminary hearing under Pa.R.Crim.P. 565(a) because of the
15 complexity of the case, the large number of witnesses the
16 Commonwealth would have to call, the expense, and the delay
17 caused by a preliminary hearing. As a preliminary hearing was
18 not held in this case, the Defendant's due process rights
19 were violated and the Defendant suffered prejudice.

20 Judge McDermott told the District Attorney's Office that if
21 defense counsel had made the decisions that the District
22 Attorney's Office made, she would "declare them incompetent."
23 The District Attorney's Office's own expert report from Gregory
24 A. Warren, Ed.D., of American Law Enforcement Training and
25 Consulting concluded that, given all the facts presented to him,
26 Officer Pownall's "use of deadly force in this case was
27 justified." This expert report was withheld from Pownall by the
28 District Attorney's Office.

29 District Attorney Krasner has the sole authority to approve
30 court filings on behalf of Philadelphia District Attorney's
31 office. While in office District Attorney Krasner directed,
32 approved and or permitted the filing of motions, presentations
33 of other pleadings and statements to the Grand Jury and the
34 Court which intentionally omitted, concealed and or withheld
35 material facts and legal authority relevant to the judicial
36 proceedings in violation of the Rules of Professional Conduct,
37 Rule 3.3 (Candor Toward the Tribunal), Rule 8.4 (Professional
38 Misconduct) and Code of Judicial Conduct, Canon 2 (Impropriety
39 and or Appearance of Impropriety).

40 WHEREFORE, District Attorney Lawrence Samuel Krasner is
41 guilty of an impeachable offense warranting removal from office
42 and disqualification to hold any office of trust or profit under
43 this Commonwealth.

44 Article V:

45 Misbehavior In Office In the Nature of Violation of
46 the Rules of Professional Conduct and Code of
47 Judicial Conduct; specifically Rule 3.3 Candor to
48 Tribunal, Rule 8.4 Professional Misconduct, and Canon
49 2 of the Code of Judicial Conduct Impropriety and
50 Appearance of Impropriety in the matter In
51 re: Conflicts of Interest of Philadelphia District

Attorney's Office

During sworn testimony, District Attorney Krasner withheld material facts from the Supreme Court when he testified under oath before the Supreme Court's Special Master. The Special Master was appointed by the Supreme Court pursuant to its King's Bench jurisdiction to investigate whether District Attorney Krasner had a conflict of interest favoring the defendant and appellant, Mumia Abu-Jamal, who had been convicted of first-degree murder of Officer Daniel Faulkner. District Attorney Krasner testified that he "never represented any advocacy organization for Mumia Abu-Jamal."

While affirmatively stating he never represented an "organization" which advocated for Mumia Abu-Jamal, District Attorney Krasner omitted the fact that he had, in fact, represented at least one pro-Mumia activist who was arrested for seeking to intimidate the judge deciding Abu-Jamal's Post Conviction Relief Act ("PCRA") Petition. That activist, who at the time was the "Director" of the "Youth Action Coalition," was arrested along-side local leaders of The International Concerned Family and Friends of Mumia Abu-Jamal, all of whom were protesting outside the home of Abu-Jamal's PCRA judge in an effort to illegally influence the very proceedings at issue in Mumia Abu-Jamal's nunc pro tunc appeal.

District Attorney Krasner represented this "Director," and potentially other pro-Mumia activists, against charges for violating a criminal statute that prohibits protesting outside the homes of judicial officers to influence the outcome of cases pending before the judicial officers. Yet, in testifying that he "never represented any advocacy organization for Mumia Abu-Jamal," District Attorney Krasner omitted these material facts, providing a partial and misleading disclosure regarding his connection to the effort to exonerate and free Mumia Abu-Jamal. District Attorney Krasner's misleading disclosure was directly relevant to the subject matter under investigation by the Supreme Court in that he was concealing material facts concerning his conflicts of interest in the Mumia Abu-Jamal matter, an issue at the very heart of the Supreme Court's review of the King's Bench Petition filed by the widow of Officer Faulkner. District Attorney Krasner therefore violated Rules of Professional Conduct, Rule 3.3 (Candor Toward the Tribunal), Rule 8.4 (Professional Misconduct) and Code of Judicial Conduct, Canon 2 (Impropriety and or Appearance of Impropriety).

WHEREFORE, District Attorney Lawrence Samuel Krasner is guilty of an impeachable offense warranting removal from office and disqualification to hold any office of trust or profit under this Commonwealth.

Article VI:

Misbehavior in Office in Nature of
Violation of Victims Rights

Federal and State law provides for certain rights for victims related to the prosecution and sentencing of the defendants who

1 victimized them or their family members (18 U.S.C. § 3771 (b)(2)
2 (A) and section 201 of the act of November 24, 1998 (P.L.882,
3 No.111), known as the Crime Victims Act). Chief among the rights
4 provided to victims is the right to be kept informed at all
5 stages of the prosecution through clear, respectful and honest
6 communication and to be consulted with regard to sentencing.
7 District Attorney Krasner repeatedly violated, and allowed
8 Assistant District Attorneys under his supervision to violate,
9 the Federal and state victims' rights acts on multiple occasions
10 by specifically failing to timely contact victims, deliberately
11 misleading victims and or disregarding victim input and treating
12 victims with contempt and disrespect.

13 WHEREFORE, District Attorney Lawrence Samuel Krasner is
14 guilty of an impeachable offense warranting removal from office
15 and disqualification to hold any office of trust or profit under
16 this Commonwealth.

17 Article VII:

18 Misbehavior In Office In the Nature of Violation
19 of the Constitution of Pennsylvania By Usurpation
20 of the Legislative Function

21 Pursuant to Article II of the Constitution of Pennsylvania,
22 the legislative power is vested in the General Assembly.
23 District Attorney Krasner as an elected executive in the City of
24 Philadelphia has no authority to create, repeal or amend any
25 state law. Despite this clear separation of powers, District
26 Attorney Krasner has contravened the authority of the
27 legislature by refusing to prosecute specifically prohibited
28 conduct under state law. Rather than exercising his inherent
29 discretionary powers to review and determine charges on a case-
30 by-case basis, District Attorney Krasner, in his capacity as the
31 Commonwealth's Attorney in the City of Philadelphia,
32 unilaterally determined, directed and ensured that certain
33 crimes would no longer be prosecuted and were therefore *de facto*
34 legal.

35 These crimes include prostitution, theft and drug-related
36 offenses, among others. In particular, the *de facto* legalization
37 of prostitution by District Attorney Krasner has had a
38 devastating impact on women who are victims of sex trafficking
39 and the communities where they are trafficked. Refusing to
40 prosecute retail theft of property with less than a value of
41 \$500, District Attorney Krasner has created an atmosphere of
42 lawlessness in Philadelphia, with the direct effect of causing
43 businesses to curtail activity or cease doing business
44 altogether in Philadelphia. District Attorney Krasner's refusal
45 to prosecute those caught driving under the influence of
46 marijuana, aside from contributing to the lawlessness in the
47 city, has created dangerous situations for the health, safety
48 and welfare of the people in Philadelphia. District Attorney
49 Krasner *de facto* legalizing such acts that the General Assembly
50 has determined to be illegal is a clear usurpation of
51 legislative powers in violation of the Constitution of

1 Pennsylvania, and thus constitutes misbehavior in office.

2 WHEREFORE, District Attorney Lawrence Samuel Krasner is
3 guilty of an impeachable offense warranting removal from office
4 and disqualification to hold any office of trust or profit under
5 this Commonwealth.

6 The House of Representatives hereby reserves to itself the
7 right and ability to exhibit at any time after adoption of this
8 resolution further or more detailed Articles of Impeachment
9 against District Attorney Lawrence Samuel Krasner, to reply to
10 any answers that District Attorney Lawrence Samuel Krasner may
11 make to any Articles of Impeachment which are exhibited and to
12 offer proof at trial in the Senate in support of each and every
13 Article of Impeachment which shall be exhibited by them.

14 Upon the articles of impeachment against Lawrence Samuel
15 Krasner, Philadelphia District Attorney, being signed by the
16 Speaker of the House of Representatives, the Speaker shall
17 appoint a committee of three members, two from the majority
18 party and one from the minority party, to exhibit the same to
19 the Senate, and on behalf of the House of Representatives to
20 manage the trial thereof.

21 The expenses of the committee shall be paid by the Chief
22 Clerk from appropriation accounts under the Chief Clerk's
23 exclusive control and jurisdiction upon a written request
24 approved by the Speaker of the House of Representatives, the
25 Majority Leader of the House of Representatives or the Minority
26 Leader of the House of Representatives.